

STATE OF MICHIGAN
COURT OF APPEALS

In re JOHNSON/RIDER, Minors.

UNPUBLISHED
November 12, 2020

No. 353433
Delta Circuit Court
Family Division
LC No. 19-000434-NA

Before: SAWYER, P.J., and M. J. KELLY and SWARTZLE, JJ.

PER CURIAM.

Respondent-mother appeals as of right the order terminating her parental rights to her minor children, AJ, LJ, and JR, under MCL 712A.19b(3)(c)(i) (conditions that led to adjudication continue to exist) and (j) (reasonable likelihood child will be harmed if returned to parent). We affirm.

I. BACKGROUND

Respondent has a lengthy history with Child Protective Services (CPS), including 10 prior investigations that involved her children’s hygiene and AJ’s behavior problems. Respondent also has a history of drug abuse, including multiple criminal convictions involving drugs, and she has described herself as an addict.

In July 2018, respondent and her husband were living with AJ, LJ, and JR, who were eight years old, seven years old, and one year old, respectively.¹ AJ and LJ left the home and made their way to a street where police found them “breaking into cars and trying to smoke cigarettes.” When police brought AJ and LJ back to the home, they found both parents asleep. Respondent testified that she had cocaine and methamphetamine in her system, in addition to having used Suboxone that day. In a separate incident, AJ and LJ were found by themselves on the second-story roof throwing items down onto the road below. The Department of Health and Human Services (DHHS) filed a petition in February 2019, requesting that the trial court exercise jurisdiction over the children and remove them from respondent’s home. The trial court removed the children from

¹ The parental rights of respondent’s husband are not at issue in this appeal.

the home and placed them with respondent's parents. LJ and JR remained with respondent's parents for the duration of this case, while AJ was later placed at a psychiatric hospital to undergo treatment for his behavioral problems.

The trial court appointed attorney John Bergman to represent respondent and attorney Timothy Cain to represent her husband. On April 1, 2019, respondent pleaded to the jurisdiction of the trial court and admitted to the allegations in the petition. She also admitted that she had used drugs on March 6, 2019, which had resulted in a drug screen that came back positive for amphetamine, methamphetamine, THC, and cocaine. At the initial dispositional hearing, the trial court ordered respondent to comply with a case-service plan that required her to stop abusing these controlled substances.

Respondent again tested positive for amphetamine and methamphetamine on April 26 and 30, 2019. She admitted to having used these drugs again, in violation of the trial court's orders. The trial court found respondent in contempt of court and sentenced respondent to serve 30 days in jail, but suspended the sentence with the conditions that respondent have no more positive drug tests and enter inpatient treatment. On June 18, 2019, respondent violated these orders as well, testing positive for amphetamine, methamphetamine, buprenorphine, and cocaine. She failed to appear at her sentencing hearing for contempt, a bench warrant was issued, and respondent was arrested. On August 1, 2019, she appeared at a sentencing hearing with Cain, who claimed to be her attorney. The trial court imposed the 30-day jail sentence previously ordered as a sanction for respondent's contempt of court.

Respondent began to show progress by attending drug treatment and providing negative drug screens. The trial court ordered respondent to attend additional drug-related services, as well as obtain employment and stable housing. Thus far in the proceedings respondent's husband had still been with respondent, had received the same trial-court orders, and had been violating them through drug use in much the same manner as respondent. The reunification plan to this point had targeted a return of the children to both parents, in one home. But by January 2020, the two were no longer living together. Moreover, while respondent's husband was meeting the requirements of the trial-court's orders and avoiding additional violations, respondent had been charged with both resisting and obstructing a police officer and trespassing. She also had failed to maintain consistent contact with her foster care worker, had cancelled several parenting-time visits, had failed to present evidence of attending Narcotics Anonymous meetings, had failed to obtain employment, and was dating and living with a man recently released from prison.

On February 14, 2020, the DHHS filed a supplemental petition to terminate respondent's parental rights to AJ, LJ, and JR. Following a hearing on March 4, 2020, the trial court terminated respondent's parental rights to the three children. This appeal followed.

II. ANALYSIS

A. STATUTORY GROUNDS

Respondent first argues that the trial court erred by finding sufficient evidence to support the existence of statutory grounds for termination.

We review for clear error the trial court's factual findings and ultimate determinations regarding the statutory grounds for termination. *In re White*, 303 Mich App 701, 709; 846 NW2d 61 (2014). A factual finding is clearly erroneous if, although there is evidence to support it, we are definitely and firmly convinced that the trial court made a mistake. *Id.* at 709-710. Only one statutory ground needs be established by clear and convincing evidence to terminate a respondent's parental rights. *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011).

In this case, the trial court found that statutory grounds for termination of respondent's parental rights existed under MCL 712A.19b(3)(c)(i) and (j). These statutory sections authorize a trial court to terminate parental rights if it finds by clear and convincing evidence that either of the following exist:

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

In December 2019, respondent began living with a man who had recently been in prison for firearms charges. The foster-care worker assigned to respondent's case ran a background check on the man, learned of his criminal background, and informed respondent of it in January 2020. Yet, respondent was still living with the man as of the March 4, 2020 termination hearing. The foster-care worker testified that the man "would not pass a background check for being appropriate for being around the children." Like the respondents in *In re White*, 303 Mich App at 712-713, and *In re Kaczkowski*, 325 Mich App 69, 77; 924 NW2d 1 (2018), respondent knew about the criminal background of the man, but decided to live with him all the same.

This living situation was itself evidence of a reasonable likelihood that the children would be harmed if they were returned to the respondent's home. It also served as evidence that respondent was not complying with her case-service plan. "[A] parent's failure to comply with the terms and conditions of his or her service plan is evidence that the child will be harmed if returned to the parent's home." *In re White*, 303 Mich App at 711. The foster-care worker testified that living with this man was a violation of respondent's case-service plan, as respondent was required to obtain appropriate housing, refrain from having unapproved people in her home at night, and avoid associating with known criminals. And before termination had been initiated, respondent had failed to comply with terms of her service plan such as refraining from having alcohol and drugs in her home, submitting to drug screens, staying in contact with her foster care worker, and working to improve her parenting skills. Therefore, the trial court did not clearly err

by finding that statutory grounds existed to terminate respondent's parental rights to the children under MCL 712A.19b(3)(j).

Because the trial court properly terminated respondent's parental rights under MCL 712A.19b(3)(j) we need not consider any other statutory grounds. See *In re Ellis*, 294 Mich App at 32.

B. BEST INTERESTS

Respondent next argues that the trial court erred by finding that termination of her parental rights was in the children's best interests.

Once a statutory ground for termination has been proven, the trial court must also find that termination is in the children's best interests before it can terminate respondent's parental rights. *In re Olive/Metts Minors*, 297 Mich App 35, 40; 823 NW2d 144 (2012). "[W]hether termination of parental rights is in the best interests of the child must be proved by a preponderance of the evidence." *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). We review for clear error the trial court's ruling regarding the children's best interests. *In re White*, 303 Mich App at 713.

"In deciding whether termination is in the child's best interests, the court may consider the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home." *In re Olive/Metts*, 297 Mich App at 41-42 (citations omitted). "[T]he parent's compliance with his or her case service plan, the parent's visitation history with the child, the children's well-being while in care, and the possibility of adoption" are additional factors to consider. *In re White*, 303 Mich App at 714. The trial court is required to consider a child's placement with relatives as a factor weighing against termination. *In re Gonzales/Martinez*, 310 Mich App 426, 434; 871 NW2d 868 (2015). "[T]he trial court has a duty to decide the best interests of each child individually." *In re Olive/Metts*, 297 Mich App at 42. A trial court is not, however, required to make individual best-interest findings for each child unless the best interests of the children significantly differ. *In re White*, 303 Mich App at 715-716.

Here, the foster-care worker assigned to respondent's case did testify that respondent had a bond with all three children, and both LJ and JR were placed with relatives. Although these factors weighed against termination, *In re Gonzales/Martinez*, 310 Mich App at 434, these factors were duly considered by the trial court, which found that they were outweighed by the factors that weighed in favor of termination. The lack of "a permanent, safe, and stable home" can support termination of parental rights even when a child is placed with a relative. *In re Frey*, 297 Mich App 242, 248-249; 824 NW2d 569 (2012). A lack of permanence, safety, and stability in a respondent's home can similarly outweigh a bond between a respondent and his children when determining the best interests of the children. *In re White*, 303 Mich App at 714.

Respondent's compliance with her case-service plan was poor. She initially continued to struggle with drug abuse, failing multiple drug screens. She then failed to obtain employment, present evidence of her attendance at Narcotics-Anonymous meetings, or keep in touch with her foster-care worker until after the trial court had ordered that the DHHS file a termination petition. She had cancelled half of her parenting time visits. Respondent had not secured stable housing,

instead choosing to live with someone recently released from prison. She was herself arrested and charged with resisting and obstructing a police officer and trespassing. Respondent's children had been removed for over a year, and her foster-care worker testified that the children had a need for permanency and stability, which could not be met by respondent in the foreseeable future. In contrast, the foster-care worker testified that the children's need for stability could be met by their father, who had demonstrated progress through the case-service plan. She testified that the DHHS considered guardianship, but viewed that as an inferior option in light of the children's ages. The worker also testified that respondent's parents could adopt AJ. On this record, the trial court did not clearly err by finding that termination of respondent's parental rights was in the children's best interests.

C. RIGHT TO COUNSEL

Finally, respondent argues that her representation by her husband's attorney at her sentencing hearing for contempt of court was a violation of her right to counsel that requires reversal of the trial court's decision terminating her parental rights. We conclude that any error that occurred does not warrant reversal.

MCL 712A.17c provides the right to an attorney in child-protective proceedings. Respondent and her husband were each assigned separate counsel in this case. Yet, counsel for respondent's husband appeared on respondent's behalf at the sentencing hearing regarding her contempt of court. Petitioner acknowledges that this was error. But this appeal is from the trial court's March 4, 2020 termination of respondent's parental rights. The sentencing hearing occurred on August 1, 2019. Respondent subsequently appeared—with her appointed counsel—at a dispositional-review hearing on October 8, 2019, a dispositional-review and permanency-planning hearing on January 8, 2020, and the termination hearing itself. At none of these hearings, which involved considerable opportunity for respondent to argue her position, did she challenge or even address the issue regarding counsel at the earlier contempt hearing, and there is no indication that the error had any effect whatsoever on either the termination proceedings or the contempt hearing.

Respondent also argues that attorney-client privilege was violated when Cain handed a piece of paper to the trial judge. "The scope of the attorney-client privilege is narrow, attaching only to confidential communications by the client to his advisor that are made for the purpose of obtaining legal advice." *Reed Dairy Farm v Consumers Power Co*, 227 Mich App 614, 618-619; 576 NW2d 709 (1998). The communication was not made by the client to her attorney, and was not made for the purpose of obtaining legal advice. The attorney did not appear to read the note, and respondent directed him to deliver it to the trial court. There was no violation of attorney-client privilege.

Affirmed.

/s/ David H. Sawyer
/s/ Michael J. Kelly
/s/ Brock A. Swartzle